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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

COUNTY OF ALAMEDA et al., Plaintiffs and Appellants, v. THE SUPERIOR COURT OF THE COUNTY OF ALAMEDA, Defendant and Respondent.	A121590 (City & County of San Francisco Super. Ct. No. 05-505884)

The County of Alameda and the Alameda County Sheriff's Office (jointly the County) provide security for the Alameda County Superior Court (the Court). The County's cost to provide security services increased in 2002 as a result of two pay raises granted to sheriff's department personnel. As a result, the County billed the Court for $18.3 million for the 2002-2003 fiscal year. After the Court paid the County only the $15.1 million that it had budgeted for the fiscal year's security expenses, the County sued to collect the unpaid balance of $3.2 million.

The trial court sustained a demurrer to the County's cause of action for a writ of mandate without leave to amend, and granted summary judgment in favor of the Court on the County's remaining claims. We hold that the trial court did not abuse its discretion when it dismissed the mandamus claim. We also conclude that summary judgment was properly granted. We therefore affirm the judgment.

BACKGROUND

I. *The Trial Court Funding Act*

The Lockyer-Isenberg Trial Court Funding Act, enacted in 1997, transferred responsibility for superior court funding from the counties to the state. (Gov. Code, §§ 77200, 77201; Historical and Statutory Notes, 37A pt. 2 West's Ann. Gov. Code (2005 ed.) foll. § 77001, p. 134.)[1] The Act allows trial courts to agree with counties to purchase specific support services. The court and the county are to enter a contract in which they "identify the scope of service, method of service delivery, term of agreement, anticipated service outcomes, and the cost of the service. The court and the county . . . shall cooperate in developing and implementing the contract." (§ 77212, subd. (d)(1).) Former section 77212.5, enacted in 1998 and repealed in 2002, directed that the trial courts "shall enter into an agreement with the sheriff's department . . . regarding the provision of court security services." (Stats. 2002, ch. 1010, § 3.)

II. *The Memorandum of Understanding*

In 1999, the Court and the County entered into a memorandum of understanding (MOU) regarding the implementation of state trial court funding and the County's continued provision of various services to the court. Article XIII of the MOU, under the heading "Charges for Direct and Indirect County Services," provides that "[a]ny direct service(s) to be provided and the rate(s) charged to the Court by the individual County departments shall be agreed upon in writing in advance of the provision of service(s). Annual cost estimates shall be provided to the Court before March 1st of each fiscal year." Article XIX of the MOU, entitled "Court Security Services," states: "As required by Government Code section 77212.5, the Court and County agree that by July 1, 1999 the Court and the Sheriff will develop an MOU describing the service levels the Sheriff

[1] All further statutory references are to the Government Code unless otherwise noted.

will provide the Court and the cost of these services. Court security charges for Court operations shall be based on actual expenditures during the claiming period pursuant to California Rule of Court 810. Service levels provided to the Court by the Sheriff shall be negotiated and agreed upon and cost estimates provided before March 1st of each fiscal year."

III. *Fiscal Year 2002-2003*

The Court and the County failed to reach agreement on the contemplated succeeding MOU that was to prescribe the sheriff's service levels until several years after fiscal year 2002-2003. The sheriff's department nonetheless continued to provide court security services. Until fiscal year 2002-2003, the Court paid the amount billed. But in fiscal year 2002-2003, the County billed the Court $18.3 million and the Court paid $15.1 million.

In order to request increased security funding for fiscal year 2002-2003, the Court was required to submit a budget change request to the Administrative Office of the Courts by June 1, 2001. If not, the Court had a final opportunity to seek more funding in May 2002. The 2002-2003 fiscal year security funding was formally approved when the Governor signed the budget on September 5, 2002.

At just about the same time, the County granted sheriff's department personnel two pay raises comprising a 14.8 percent salary increase. Eight percent of the raise was retroactive to January 2002, and the remaining 6.8 percent was retroactive to July 1, 2002.

On October 25, 2002, the Court informed the sheriff's department that the pay increase created a serious fiscal problem and that it was "extremely doubtful" the Court would be able to sustain its level of security services in light of the increased cost. The Court also claimed that the department's failure to give the Court advance notice of its pay negotiations made it "virtually impossible" for the Court to adequately plan for the increases. The sheriff's department promptly implemented changes that reduced its

security costs by over $4 million by the end of fiscal year 2002-2003, but its total bill for the fiscal year was $18.3 million. The $15.1 million the Court paid the sheriff was all it had budgeted for court security services. It rejected the County's claim for the additional $3.2 million.

IV. *The County's Lawsuit*

On January 31, 2006, the County filed its amended petition for writ of mandate and complaint for breach of implied and express contract.[2] The Court demurred. The trial court sustained the demurrer to the writ of mandate claim without leave to amend on the grounds that (1) the County has an adequate remedy at law; and (2) the Court has no ministerial duty to pay for the increased security costs due to the sheriff's department salary increases. The trial court overruled the demurrer to the contract causes of action. The County filed yet another amended complaint that added causes of action for breach of the implied covenant of good faith and fair dealing, estoppel, and declaratory relief.

The Court moved for summary judgment. It asserted that it did not breach the written MOU, and that the County was barred by law from collecting on its implied contract theory. The Court also argued that the good faith and fair dealing and estoppel claims failed because there was no breach of contract upon which they could be premised, and no evidence that the Court induced the County to believe it would pay for the salary increases. The Court argued the claim for declaratory relief failed because it was based on the same flawed legal theories as the contract claims.

The trial court ordered additional briefing on 41 questions and directed the Court to identify those facts within its statement of undisputed material facts that were truly critical to the resolution of the motion for summary judgment. The Court identified only 23 truly material facts, all of which were undisputed. "In general," the Court said, the

[2] The amended complaint also named the Judicial Council and the Administrative Office of the Courts as defendants on the writ of mandate claim. Both successfully demurred to the complaint and are not involved in this appeal.

undisputed facts were: "(1) the County and Alameda Court entered into the 1999 MOU; (2) Plaintiffs provided their employees with retroactive salary increases during the 2002-2003 fiscal year; (3) the Alameda Court did not desire to terminate all court security services provided by Plaintiffs and in fact paid Plaintiffs its entire budget of $15.1 million for security services for 2002-2003; and (4) there was no MOU for security services that addressed the scope and costs of the services to be provided during the 2002-2003 fiscal year."

The trial court granted summary judgment as to all remaining causes of action. It observed: "This case illustrates the consequences of the failure of governmental entities to follow a detailed legislative scheme designed to avoid this very situation. The purpose of the Trial Courts Funding Act, related legislation, administrative directives and the parties' MOU was, first and foremost, to ensure that the public's money was carefully spent by both the trial courts and the counties and to do so in a way that would ensure the effective continuation of necessary services and avoid the very problem this case presents. Given that the parties failed to comply with their statutory and contractual obligations and the Sheriff provided the services with no binding contractual commitment to pay for the increased costs, the law of this State mandates that it is the Sheriff that must suffer the consequences." The trial court found as a matter of law that: (1) the Court did not breach the MOU; (2) the "prescribed contracting method" rule precluded the County's implied contract claim; and (3) the County's causes of action for estoppel, declaratory relief and breach of the implied covenant of good faith and fair dealing were primarily based on the same defective contract claims and otherwise unsupported by the allegations and evidence.

The County timely appealed.

DISCUSSION

I. *The Demurrer*

"On review from an order sustaining a general demurrer, ' "[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action.' " (*Stanton Road Associates v. Pacific Employers Ins. Co.* (1995) 36 Cal.App.4th 333, 340-341.)

The complaint in this case failed to state a cause of action for mandamus. "A writ of mandate may be issued by any court . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." (Code Civ. Proc., § 1085, subd. (a).) The petitioner must show that there is no other plain, speedy and adequate remedy; that the public official or entity had a ministerial duty to perform; and that the petitioner has a clear and beneficial right to performance. (*Transdyn/Cresci JV v. City and County of San Francisco* (1999) 72 Cal.App.4th 746, 752.) "Whether, in a particular case, the writ should issue, lies, to a considerable extent, in the discretion of the court to which the application is made. [Citations.] The right to the writ must be clear and certain [citations], and mandamus may not be resorted to as the substitute for an adequate legal remedy. [Citations.] The purpose of the writ in this state, as at common law, is to prevent a failure of justice." (*Irvine v. Gibson* (1941) 19 Cal.2d 14, 15-16.)

The trial court found that the County did not, and could not, plead the lack of an adequate legal remedy. It said: "[T]here's certainly an adequate remedy at law. That's what this whole lawsuit is about, a suit for breach of contract or alleged breach of contract and implied contract for damages." Because the existence of an adequate legal

remedy depends on the facts of the particular case, whether there is rests largely within the trial court's discretion. (*San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813, 820; 8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 117, pp. 1009-1010.) Here, the County has not shown an abuse of that discretion. The County's claims for breach of express and implied contract sought to attain exactly the same relief as its petition for writ of mandate—payment of $3.2 million required to cover the cost of the sheriff's department salary increases—and largely on the basis of the same facts. Moreover, the implied contract cause of action is based on the same statutory obligations as the petition for a writ of mandate—the Trial Court Funding Act and the Superior Court Law Enforcement Act of 2002 (Gov. Code, § 69920 et seq.). Thus, as in *Irvine v. Gibson, supra,* 19 Cal.2d at p. 16,"[t]he petitioner . . . has not only shown that there is an adequate legal remedy for the enforcement of the right which he claims, but also that he is concurrently pursuing that remedy."

The County argues that contract claims do not provide it an adequate legal remedy because "Plaintiffs are permitted to plead alternative theories in their complaint," even if those theories are inconsistent. The County's statement is an accurate expression of general law. (See, e.g., *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 29.) But it has nothing to do with a party's ability to seek a writ of mandate when there are adequate legal means to achieve the same relief. None of the County's authorities for the alternative pleading rule address the availability of mandamus and none, therefore, support its argument. (*Ibid*; *Beatty v. Pacific States S. & L. Co.* (1935) 4 Cal.App.2d 692, 697; *Rosenfeld, Meyer & Susman v. Cohen* (1983) 146 Cal.App.3d 200, 227, overruled on another point in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th

503, 521, fn. 10; *Lim v. The.TV Corp. Internat.* (2002) 99 Cal.App.4th 684, 690.) The court properly sustained the demurrer without leave to amend.[3]

II. *Summary Judgment*

A. Legal Standards

" 'To secure summary judgment, a moving defendant may prove an affirmative defense, disprove at least one essential element of the plaintiff's cause of action [citations] or show that an element of the cause of action cannot be established [citations]. [Citation.] The defendant "must show that under no possible hypothesis within the reasonable purview of the allegations of the complaint is there a material question of fact which requires examination by trial." [Citation.] [¶] The moving defendant bears the burden of proving the absence of any triable issue of material fact, even though the burden of proof as to a particular issue may be on the plaintiff at trial. [Citation.] . . . Once the moving party has met its burden, the opposing party bears the burden of presenting evidence that there is any triable issue of fact as to any essential element of a cause of action.' " (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1485.)

"In reviewing the propriety of a summary judgment, the appellate court must resolve all doubts in favor of the party opposing the judgment. [Citation.] The reviewing court conducts a de novo examination to see whether there are any genuine issues of material fact or whether the moving party is entitled to summary judgment as a matter of law." (*M.B. v. City of San Diego* (1991) 233 Cal.App.3d 699, 703-704.) "We accept as true the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences that can be drawn from them. [Citation.] However, to defeat the motion for summary judgment, the plaintiff must show ' "specific facts," ' and cannot

[3] Because the demurrer was correctly sustained on this ground, we will not address the trial court's further finding that the Court does not have a ministerial duty to pay for the salary increases.

rely upon the allegations of the pleadings." (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 805.) "While '[s]ummary judgment is a drastic procedure, should be used with caution [citation] and should be granted only if there is no issue of triable fact' [citation], it is also true '[j]ustice requires that a defendant be as much entitled to be rid of an unmeritorious lawsuit as a plaintiff is entitled to maintain a good one.' [Citation.] 'A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail.' " (*M.B. v. City of San Diego*, *supra*, at p. 704.)

B. Breach of Express Contract

The County contended that under the terms of the MOU, the Court was obligated to pay in full for the actual costs of all security services rendered in fiscal year 2002-2003. The trial court disagreed. Based on undisputed facts, the trial court concluded that the MOU was not an enforceable contract. It "committed the parties to reach an agreement on future services . . . ." but "there can be no breach of that obligation nor any contractual obligation to pay for subsequent services absent a subsequent written agreement to do so." Accordingly, it found that there were no material facts from which a rational jury could find in favor of the County on its claim that the Court breached a written contract. We reach the same conclusion.

It is well settled that "if an 'essential element' of a promise is reserved for the future agreement of both parties, the promise gives rise to no legal obligation until such future agreement is made." (*City of Los Angeles v. Superior Court* (1959) 51 Cal.2d 423, 433; *Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 213-214; *Beck v. American Health Group Internat., Inc*. (1989) 211 Cal.App.3d 1555, 1562-1563.) The cost of services was undisputedly an essential element of the parties' promise, or agreement, that the County would provide security for the Court. The question, then, is whether the MOU includes a legally enforceable price, or, as the Court contends, was merely an agreement to agree on the cost for those services in the future.

Article XIII of the MOU requires the Court and County to reach advance agreement on the scope and cost of any direct services the County is to provide to the Court: "Any direct service(s) to be provided and the rate(s) charged to the Court by individual County departments shall be agreed upon in writing in advance of the provision of service(s)." Article XIV provides: "if the Court desires to receive or continue to receive a specific service(s) from the County . . . and the County desires to provide or continue to provide said service(s), the Court shall enter into a separate agreement with the affected County agency or department. The service agreement shall identify the scope of service(s), method of service delivery, term of agreement, anticipated service outcomes, *and the cost of the service(s).*" (Italics added.)

Article XIX of the MOU specifically addresses the provision of security services. It states that "the Court and County agree that by July 1, 1999 the Court and the Sheriff will develop an MOU describing the service levels the Sheriff will provide the Court and the cost of these services. Court security charges for Court operations shall be based on actual expenditures during the claiming period pursuant to California Rule of Court 810. Service levels provided to the Court by the Sheriff shall be negotiated and agreed upon and cost estimates provided before March 1st of each fiscal year." These provisions leave the cost and level of security services subject to the parties' future agreement. The trial court therefore correctly found that the MOU does not encompass an enforceable agreement to pay for security.

The County disagrees, and contends that Article XIX specifies a sufficiently definite cost because security charges shall be based on "*actual expenditures* . . . pursuant to California Rule of Court 810."[4] (Italics added.) In the County's view this language

[4] Former rule 810, now rule 10.810, addresses the costs of court operations in some detail. Those costs are defined as including salaries and benefits for sheriff's employees "as the court deems necessary." (Cal. Rules of Court, rule 10.810(a)(3).)

obligates the Court to pay for the sheriff's services no matter the scope or the cost.[5] The County's contention stumbles over well-settled rules for interpreting contracts, most notably that "[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other" (Civ. Code, § 1641) and "where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858; *Kavruck v. Blue Cross of California* (2003) 108 Cal.App.4th 773, 783; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 746, p. 834-835.) Articles XIII, XIV and XIX provide that costs of services will be settled in a separate written agreement. The requirement for a separate writing would be rendered meaningless if, as the County claims, the price for the sheriff's services is in fact supplied by the "actual expenditures" language in Article XIX.

Moreover, the County reads too much into the requirement that security charges "shall be based on actual expenditures." Article XIX does *not* say that cost and "actual expenditures" are necessarily one and the same. Rather, it says that the cost of security services shall be "*based on*" actual expenditures. The Oxford English Dictionary defines the verb "base" as "to make, lay, or form a foundation for." "Basis," similarly, is defined as "[t]he main constituent, fundamental ingredient" and "a set of principles laid down or agreed upon as the ground of negotiation, argument, or action." (Oxford English Dict., <http://dictionary.oed.com> [as of September 15, 2009].) The reference to "actual expenditures" is thus readily harmonized with the multiple provisions requiring a further agreement when it is interpreted in its usual sense, as providing a starting point or "fundamental ingredient" for cost negotiations. This straightforward interpretation

[5] The County also cites Article XX of the MOU, which provides that the Court and County will share the cost of the required equipment, facility modifications and staffing "when there is mutual agreement to establish a new weapons screening station." But, the County admits that no new weapons screening stations were established in fiscal year 2002-2003.

comports also with the rule that contract language is generally presumed to have been used in its usual sense. (Code Civ. Proc., § 1861.)[6]

The County's argument that the cost term can be supplied by reference to the Court's alleged historical practice to pay the County's security bills in full is also unpersuasive. The County relies on the rule that " 'although an agreement may be indefinite or uncertain in its inception, the subsequent performance of the parties will be considered in determining its meaning for they are least likely to be mistaken as to the intent.' " (*Oceanside 84, Ltd. v. Fidelity Federal Bank* (1997) 56 Cal.App.4th 1441, 1449; see generally 1 Witkin, Summary of Cal. Law, *supra*, Contracts, § 749, pp. 838-840.) But the MOU is not so uncertain. To the contrary, it unambiguously requires the parties to enter a successive MOU that identifies the cost and level of security services in advance of their provision to the court. "Parol evidence is admissible only to prove a meaning to which the contractual language is 'reasonably susceptible'; not to flatly contradict the express terms of the agreement. [Citation.] Thus if the contract calls for the plaintiff to deliver to defendant 100 pencils by July 21, 1992, parol evidence is not admissible to show that when the parties said 'pencils' they really meant 'car batteries' or that when they said 'July 21, 1992' they really meant May 13, 2001." (*Consolidated World Investments, Inc. v. Lido Preferred Ltd*. (1992) 9 Cal.App.4th 373, 379.) Here, the

[6] The requirement that cost be based on actual expenditures also may differ in substance from a requirement that the Court pay all of the sheriff's actual costs. For example, staffing shortages, illness, or unanticipated local events or emergencies requiring the sheriff to provide assistance to other law enforcement agencies might require the sheriff to incur extraordinary costs for court security, e.g., for overtime pay, that were not anticipated during the budgeting process. A requirement that the Court pay all of the sheriff's actual costs would place the responsibility for those costs on the Court, even though the circumstances giving rise to the additional costs were unanticipated or unrelated to court operations. In contrast, Article XIX's directive that court security charges are to be "based on actual expenditures" leaves the allocation of responsibility for such unanticipated costs to be decided between the parties, presumably as part of the services agreement contemplated by the MOU.

County essentially argues that when the parties said the rates for security services "shall be agreed upon in writing in advance," they in fact meant that the Court would pay for whatever security services rendered and billed at the sheriff's cost, and without a written agreement. The trial court correctly rejected this proposition.[7]

Finally, the authorities cited by the County do not support its view that the MOU includes an enforceable contract for security services, as in each case the County relies upon as precedent, the contract at issue omitted only nonessential terms. (See *City of Los Angeles v. Superior Court*, *supra*, 51 Cal.2d at p. 433 [stating general rule that no legal obligation arises if essential element is reserved for the future agreement but finding parties had agreed on essential terms; contract to exchange properties, erect stadium and procure transfer of the Dodgers baseball franchise from Brooklyn to Los Angeles]; *Herman v. County of Los Angeles* (2002) 98 Cal.App.4th 484, 488 [same; contract for police services]; *Okun v. Morton* (1988) 203 Cal.App.3d 805, 817-818 [same; contract for development of Hard Rock Cafe contained terms sufficient to establish how future ventures were to be financed, owned, and operated]; *Boyd v. Bevilacqua* (1996) 247 Cal.App.2d 272, 285-287 [same; contract for commercial development]; *Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 623 [contract to transfer real property].)

C. Breach of Implied Contract

The County also alleged a cause of action based on a contract implied in fact. The County claimed a contract arose because it "provided court security services to [the Court] with the understanding that [the Court], as was their past practice, would reimburse [the County] for the cost of the court security services billed . . . ." The trial court ruled that an implied-in-fact contract was precluded by the statutes that require any agreement for court security services be in writing. Here, too, we agree.

[7] We express no opinion on the merits of the County's disputed factual assertion that the Court had a practice of paying the full amount billed without objection.

Generally, a contractual obligation is not enforceable against a state agency unless the agency is authorized to incur the obligation by constitution or statute. (*Air Quality Products, Inc. v. State of California* (1979) 96 Cal.App.3d 340, 349.) " ' "One dealing with public officers is charged with the knowledge of, and is bound at his peril to ascertain, the extent of their powers to bind the state for which they seem to act. And, if they exceed their authority, the state is not bound thereby to any extent." ' " (*Id.* at p. 350, quoting *Mullan v. State* (1896) 114 Cal. 578, 587; *South Bay Senior Housing Corp. v. City of Hawthorne* (1997) 56 Cal.App.4th 1231, 1235.) Where a statute requires a public entity to follow a certain prescribed method when forming a contract, " ' "the *mode* is the *measure* of the power. A contract made otherwise than as so prescribed is not binding or obligatory as a contract and the doctrine of implied liability has no application in such cases." ' " (*South Bay v. Senior Housing, supra,* at p. 1235; *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650, 667; *Reams v. Cooley* (1915) 171 Cal. 150, 154.)

Section 77212, subdivision (d)(1) authorizes the courts to contract with counties for the delivery of services. It provides: "If a trial court desires to receive or continue to receive a specific service from a county or city and county . . ., and the county or city and county desires to provide or continue to provide that service . . ., *the presiding judge of that court* and the county or city and county shall enter into a contract for that service. *The contract shall identify the scope of service, method of service delivery, term of agreement, anticipated service outcomes, and the cost of the service.* . . . [¶] For any contract entered into after January 1, 2002, the amount of any indirect or overhead costs *shall* be individually stated in any contract together with the method of calculation of the indirect or overhead costs. . . . The Judicial Council may audit the county figures to ensure compliance with this section and to determine the reasonableness of the figures." (Italics added.)

The County argues that the language of section 77212 reflects a legislative intent that a contract for services may be oral or implied. The trial court rejected that contention. So do we. The specificity of terms required by section 77212, subdivision (d)(1)—i.e., that the contract must identify the scope of service, the method of delivery, the term, the cost, and must individually state the amount of any indirect or overhead costs and the method of their calculation—compels the conclusion that the Legislature contemplated a written, not implied, agreement. Moreover, section 77212 permits the Judicial Council to audit the calculation of charges. As the trial court noted, "one could not 'audit' an oral or implied contract, and the mandate that certain costs be 'individually stated' would be nonsensical as applied to an oral or implied contract."

Statutes must be given a reasonable and commonsense interpretation consistent with the Legislature's purpose so as to achieve a sound policy outcome rather than absurdity. (*City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847, 858.) Here, the only reasonable conclusion is that the Trial Court Funding Act requires a written contract. Although the County argues the "prescribed contracting" method rule should not apply because the sheriff's department was *required* to provide the Court with security services, it cites neither authority nor any persuasive rationale for this distinction.

For a time, former section 77212.5[8] also addressed the sheriff's provision of security services to the courts. The County argues that former section 77212.5, rather than section 77212, subdivision (d)(1), governed the contract formation process. Former section 77212.5 provided: "Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department *shall enter into an agreement* with the sheriff's department that was providing court security services as of July 1, 1998, regarding the

[8] Former section 77212.5 was added by Statutes 1998, chapter 764 (Assem. Bill No. 92), section 1, and repealed by Statutes 2002, chapter 1010 (Sen. Bill No. 1396), section 3.

provision of court security services." (Italics added.) Former section 77212.5 does not specify that the agreement must be in writing. The County invokes the rule of statutory interpretation that where general and specific provisions are inconsistent, the specific provision controls. (See, e.g., *Kavruck v. Blue Cross of California*, *supra*, 108 Cal.App.4th at p. 781; 1 Witkin, Summary of Cal. Law, *supra*, Contracts, § 754, p. 845.) The County thus argues that former section 77212.5 supplants section 77212, subdivision (d)(1)'s requirement that service agreements be in writing because it applies specifically to security service agreements between courts and sheriffs' departments.

The flaw in the County's argument is that the two provisions do not conflict. There is no inconsistency between a provision that requires trial courts to enter agreements with sheriffs' departments for the provision of security services and another that requires *all* service agreements between courts and counties to be in writing. "[S]tatutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing* Com. (1987) 43 Cal.3d 1379, 1387.) Moreover, a contrary conclusion makes no sense. Why would the Legislature require that other agreements between counties and trial courts be in writing but exempt multi-million dollar contracts for court security services from such a requirement? The County has no answer to this question. We will not ascribe an absurd meaning to the statute instead of one that reasonably interprets and harmonizes its provisions. " 'Absurd or unjust results will never be ascribed to the legislature and it will not be presumed to have used inconsistent provisions as to the same subject in the immediate context.' " (*People v. Ventura Refining Co.* (1928) 204 Cal. 286, 292.)

The County's reliance on the legislative history of Senate Bill No. 1396, which in 2002 repealed section 77212.5 and added section 69926, is misplaced. Section 69926, subdivision (b), states: "The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of

court security services, cost of services, and terms of payment." The legislative history states that Senate Bill No. 1396 was intended to "clarify the law," since prior trial court funding statutes did not "directly address[]" court security. (Sen. Rules Com., 3d reading analysis of Sen. Bill No. 1396 (2001-2002 Reg. Sess.) as amended Aug. 24, 2002,)[9] Senate Bill No. 1396 therefore supports, rather than undermines, the conclusion that the prior law it "clarif[ied]" also required a written contract.

D. Estoppel

The County's cause of action for estoppel is premised on an allegation that the Court induced the County to believe it would be compensated for all court security services rendered and billed in fiscal year 2002-2003. Therefore, the County maintains, the Court should be equitably estopped from disputing its obligation to pay the County's full $18.3 million bill. The trial court correctly found no basis for an estoppel.

" 'The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.' " (*Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 868-869.) One such requisite element for equitable estoppel is that the party asserting estoppel was ignorant of the true facts. (*Ibid.*) Here, the County agreed in the MOU that any contract for security services would be in writing. The County is presumed to know the limitations on its ability to create a binding contractual obligation on the state—which would include the limitation imposed by the prescribed method of contracting in section 77212. (*Air Quality Products, Inc. v. State of California, supra,* 96 Cal.App.3d at p. 350.) Given this

[9] At the County's request, we take judicial notice of the pertinent legislative history. (Evid. Code, §§ 459, 452, subds. (b), (c).)

presumption, the County cannot have relied reasonably on representations that it would be paid in full for all security services billed, without an advance written contract. Estoppel is generally not available to enforce a contract that otherwise fails to satisfy public contracting requirements. (*G. L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1094; see *Medina, supra*, at p. 869 ["principles of estoppel may not be invoked to directly contravene statutory limitations"]; *First Street Plaza Partners v. City of Los Angeles, supra,* 65 Cal.App.4th at pp. 667-669 [and cases discussed].) That is precisely what the County's estoppel claim seeks to achieve.

The County supports its estoppel argument with *City of Orange v. San Diego County Employees Retirement Assn.* (2002) 103 Cal.App.4th 45. *City of Orange* rejected an argument that a city contract was void because it was not in writing and signed by the mayor, as required by law. The appellate court recognized an estoppel in that context, and distinguished *Mezzetta* on two grounds. First, the alleged oral agreement in *Mezzetta* imposed a financial burden on the public entity, while the contract in *City of Orange* did not. Second, *Mezzetta* concerned a private party's attempt to enforce an oral agreement against a municipality, while in *City of Orange* it was the city, not the private entity, that was attempting to enforce the alleged oral contract. (*City of Orange, supra,* at pp. 53-54.) "As the *Mezzetta* court observed, 'restrictions on a municipality's power to contract . . . are designed to protect the public, not those who contract with the municipality.' " (*Id*. at p. 54.) This case is not the same as either *City of Orange* or *Mezzetta*, as it involves a disputed agreement between two public entities. However, we believe this situation aligns more readily with *Mezzetta* because (1) the statutory restrictions on the power to contract for court services are undoubtedly designed to protect the public from unfunded, miscalculated or incautious expenditures; and (2) a finding that the Court is estopped to deny its alleged indebtedness would burden state taxpayers with a $3.2 million debt that was never negotiated between Court and County or appropriated as part of the state

budgeting process. We therefore cannot agree with the County's position that *City of Orange* provides the controlling law.

The County relies also on *County of Calaveras v. Calaveras County Water Dist.* (1960) 184 Cal.App.2d 276, a case which appears to have been cited in only *City of Orange v. San Diego County Employees Retirement Assn., supra,* 103 Cal.App.4th at pages 56-57. *Calaveras,* like *City of Orange*, concerned a public entity's suit seeking to enforce a nonconforming contract. Because the defendants who were estopped to deny their contractual obligation were private entities, *Calaveras* did not present a situation where enforcing the obligation would create an unauthorized burden on the public fisc. Moreover, the court found the defect in the contract—it was executed by a commissioner who lacked express authorization by the board of supervisors—was "at most an irregularity, but it did not render the contract void to the extent that it could not be ratified by the county." (*County of Calaveras, supra,* at p. 283.) The same cannot be said here. Both the Trial Court Funding Act and the MOU explicitly require a written contract, and there is none. The County's lawsuit seeks to enforce an obligation against a public entity. To do so here there must be a written contract.

E. Remaining Claims

The County also alleged the Court breached the duty of good faith and fair dealing implicit in the alleged express and implied contracts by failing to disclose that it would not pay more than its $15.1 million budget for court security services and by refusing to pay the additional $3.2 million. The trial court correctly granted summary judgment on this claim. "It is universally recognized the scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract. [Citations.] . . . Under traditional contract principles, the implied covenant of good faith is read into contracts 'in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purpose.' " (*Carma Developers (Cal.), Inc. v. Marathon Development*

California, Inc. (1992) 2 Cal.4th 342, 373.) Thus, "*[t]here is no obligation to deal fairly or in good faith absent an existing contract.* [Citations.] If there exists a contractual relationship between the parties, as was the case here, the implied covenant is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated in the contract." (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1032, italics added.) Here there was no contractual agreement, express or implied, that required the Court to pay for the sheriff's salary increases. Accordingly, there is no basis for a violation of the implied covenant.

The County's declaratory relief claim fails for related reasons. The County sought a judicial declaration that the Court had a mandatory duty under the Trial Court Funding Act to pay for the cost of security services "regardless of whether the parties have an existing contract in place governing the scope and nature of those services." But, as explained in relation to the County's breach of implied contract claim (§ II.C., *ante*, at p. 13), the Act does not obligate a trial court to pay for security services in the absence of a written agreement. Here the County failed to allege a viable claim for breach of contract.

Finally, the County argues the court erred because it granted summary judgment solely on the basis of the 23 facts identified as material and undisputed in the Court's supplemental brief when the Court originally submitted a separate statement listing 111 purportedly undisputed facts. The County maintains the Court conceded the materiality of those 111 facts when it included them in its original separate statement, and the trial court was therefore *required* to find that the parties' dispute over certain of those facts precluded summary judgment. Not so. The trial court was not bound to accept either party's representation that certain facts were either material or undisputed. Moreover, the County fails to identify any purportedly disputed fact that is material to the resolution of the issues raised in this appeal. There was no error.

DISPOSITION

The judgment is affirmed.

_____
Siggins, J.

We concur:

_____
Pollak, Acting P.J.

_____
Jenkins, J.